

No. 80308-1

J.M. JOHNSON, J. (concurring in dissent)—I join the dissent’s conclusion that the mobility of Micah Tibbles’ car, plus the danger of destruction of evidence, qualifies as exigent circumstances. Trooper Norman Larsen’s search thus comported with Washington Constitution article I, section 7. I write separately because the threat posed to public safety by drug-impaired driving further supports applying the exigent circumstances exception.

Danger to the public or an arresting officer can provide a basis for warrantless searches under the exigent circumstances exception. *State v. Counts*, 99 Wn.2d 54, 60, 659 P.2d 1087 (1983) (citing *United States v. Moschetta*, 646 F.2d 955 (5th Cir. 1981)). It is established but not sufficiently recognized that marijuana, like alcohol, impairs behavioral and cognitive skills and thus impairs driving performance.<sup>1</sup> Indeed, marijuana

intoxication is a leading cause of fatal driving accidents in this country.<sup>2</sup> Thus, while marijuana use outside the automobile context may not automatically implicate an immediate concern for public safety, a “stoned” driver certainly does (especially with a supply of additional, readily available drugs under his seat). Here, the officer released Tibbles after questioning, presumably because Tibbles did not show signs of great present impairment. But a driver who has marijuana and a pipe under the front seat, as Tibbles did, is no less a threat to public safety than an apparently sober driver with an open container of alcohol. The exigent circumstances exception to the warrant requirement is thus satisfied by the vehicle’s mobility, the threat to preservation of evidence, and the danger to public safety.

The majority asserts that allowing the circumstances of this case to justify a warrantless search would authorize similar searches during “any number of encounters between law enforcement and private citizens that occur everyday.” Majority at 8. Not so; the facts of this case are not

---

<sup>1</sup> See Nat’l Inst. on Drug Abuse, NIDA InfoFacts: Drugged Driving (Apr. 2008) (citing academic studies), *available at* <http://www.nida.nih.gov/PDF/Infofacts/driving08.pdf> (last visited Aug. 2, 2010).

<sup>2</sup> See Nat’l Inst. on Drug Abuse, Marijuana Abuse (2005) (citing academic studies) (as much as 11 percent of fatal accident victims test positive for THC (tetrahydrocannabinol), the drug in marijuana), *available at* <http://www.drugabuse.gov/PDF/RRMarijuana.pdf> (last visited Aug. 2, 2010).

common. Here, an officer was working alone at night in a rural part of the state. He made a traffic stop on a highway. Upon inspection, he plainly detected the strong odor of marijuana, a drug that impairs drivers and could lead to an accident in an area removed from any substantial medical and emergency services. A search of the suspect revealed no marijuana, leaving the car as the only possible location of the odor. These facts do not describe multiple daily encounters between law enforcement officers and private citizens in this state. For those uncommon cases where these facts are replicated, the exigent circumstances legal framework provides the authority of law required for a constitutional search under article I, section 7. All too often, innocent third parties are the victims of such drivers. The constitution allows police to take reasonable steps to avoid such tragedies. I dissent.

AUTHOR:

Justice James M. Johnson

---

WE CONCUR:

---

---

---

---

---